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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Elizabeth Rosson,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-01284-PHX-JJT

ORDER

15 At issue is the denial of Solomon David Rosson's Application for Disability
16 Insurance Benefits by the Social Security Administration under the Social Security Act.
17 Plaintiff Elizabeth Rosson, the Applicant's mother, filed a Complaint (Doc. 1) with this
18 Court seeking judicial review of that denial. In her Opening Brief, Plaintiff explains that
19 the Applicant passed away around August 31, 2021, and she was substituted as the party
20 entitled to bring the Applicant's claim.¹ The Court now addresses Plaintiff's Opening Brief
21 (Doc. 11, Pl. Br.), Defendant Social Security Administration Commissioner's Response
22 Brief (Doc. 14, Def. Br.), and Plaintiff's Reply (Doc. 18, Reply). The Court has reviewed
23 the briefs and Administrative Record (Doc. 10, R.) and now affirms the Administrative
24 Law Judge's (ALJ) decision (R. at 27–45) as upheld by the Appeals Council (R. at 1–5).

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28 ¹ The record contains no statement of the cause of death or its relationship to the
Applicant's impairments or his application for disability insurance benefits, and the Court
does not consider the fact of the Applicant's death in resolving this matter.

I. BACKGROUND

The Applicant filed an Application for Disability Insurance Benefits on July 22, 2019, for a period of disability beginning on February 26, 2019. (R. at 27.) His claim was denied initially on April 13, 2020, and upon reconsideration on August 6, 2020. (R. at 27.) On September 18, 2020, the Applicant appeared telephonically before the ALJ for a hearing regarding his claim. (R. at 54.) On June 2, 2021, the ALJ denied the Applicant's claim. (R. at 27–45.) On June 6, 2022, the Appeals Council denied Plaintiff's Request for Review of the ALJ's decision. (R. at 1–5.)

In the Decision, the ALJ found the Applicant had the severe impairments of lumbar and cervical degenerative joint disease, post-concussion syndrome, occipital neuralgia, and obesity. (R. at 30.) The ALJ evaluated the medical evidence and testimony and ultimately concluded that the Applicant was not disabled. (R. at 45.) In so doing, the ALJ determined that the Applicant did “not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.” (R. at 33.) The ALJ found that the Applicant had the Residual Functional Capacity (RFC) to perform light or sedentary work. (R. at 43.) Based on the RFC formulation and the testimony of the Vocational Expert (VE) at the hearing, the ALJ found that the Applicant could perform his past work as a security guard as well as other jobs that exist in significant numbers in the national economy such that the Applicant was not under a disability as defined in the Social Security Act. (R. at 43–45.)

II. LEGAL STANDARD

In determining whether to reverse an ALJ's decision, the district court reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner's disability determination only if the determination is not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable person might accept as adequate to support a conclusion considering the record as a whole.

1 *Id.*; *see also* *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). To determine whether
 2 substantial evidence supports a decision, the Court must consider the record as a whole and
 3 may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*
 4 Generally, “[w]here the evidence is susceptible to more than one rational interpretation,
 5 one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas*
 6 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

7 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 8 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 9 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
 10 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
 11 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
 12 § 404.1520(a)(4)(i). If so, the claimant is not disabled, and the inquiry ends. *Id.* At step
 13 two, the ALJ determines whether the claimant has a “severe” medically determinable
 14 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not
 15 disabled, and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s
 16 impairment or combination of impairments meets or medically equals an impairment listed
 17 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so,
 18 the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step four.
 19 *Id.* At step four, the ALJ assesses the claimant’s residual functional capacity and
 20 determines whether the claimant is still capable of performing past relevant work.
 21 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled, and the inquiry ends. *Id.*
 22 If not, the ALJ proceeds to the fifth and final step, where she determines whether the
 23 claimant can perform any other work in the national economy based on the claimant’s RFC,
 24 age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is
 25 not disabled. *Id.* If not, the claimant is disabled. *Id.*

26 **III. ANALYSIS**

27 Plaintiff raises the following arguments for the Court’s consideration: (1) the ALJ’s
 28 reasons for discounting the medical opinions of the Applicant’s treating and examining

1 providers were not supported by substantial evidence in the record; (2) the ALJ rejected
 2 the Applicant’s testimony without clear and convincing reasons; (3) the ALJ rejected lay
 3 witness testimony without specific, germane reasons; and (4) the hypotheticals presented
 4 to the VE were incomplete. (Pl. Br. at 2.) The Court now examines these in turn.

5 **A. Medical Opinions**

6 Plaintiff contends that the ALJ gave insufficient reasons for discounting the
 7 opinions of Drs. Sheba Shah, a pain management specialist, and Dr. Kareem Shaarawy, a
 8 neurologist, who treated the Applicant. (Pl. Br. at 7–15.)

9 The Ninth Circuit no longer accords special deference to a treating or examining
 10 physician. *Woods v. Kijakazi*, 32 F. 4th 785, 792 (9th Cir. 2022). In 2017, the Social
 11 Security Administration amended the regulations for evaluating medical evidence. *See*
 12 *Revisions to Rules Regarding Evaluation of Medical Evidence*, 82 Fed. Reg. 5844, 5844
 13 (Jan. 18, 2017). The 2017 regulations provide that “[w]e will not defer or give any specific
 14 evidentiary weight, including controlling weight, to any medical opinion The most
 15 important factors we consider when we evaluate the persuasiveness of medical opinions
 16 . . . are supportability . . . and consistency.” 20 C.F.R. § 404.1520c(a). Other factors, which
 17 an ALJ “may, but [is] not required to[] explain” when evaluating the persuasiveness of a
 18 medical opinion, are the medical source’s “relationship with the claimant,”
 19 “specialization,” “familiarity with the other evidence in the claim,” and “understanding of
 20 our disability program’s policies and evidentiary requirements.” *Id.* § 404.1520c(b)(2), (c).

21 Moreover, the Ninth Circuit held its requirement that ALJs provide “specific and
 22 legitimate reasons” for rejecting a treating or examining doctor’s opinion is incompatible
 23 with the revised regulations. *Woods*, 32 F. 4th at 790. Nonetheless, in rejecting a treating
 24 or examining doctor’s opinion as unsupported or inconsistent, an ALJ must provide an
 25 explanation—that is, reasons—supported by substantial evidence. *Id.* This means that the
 26 ALJ “must ‘articulate . . . how persuasive’ it finds ‘all of the medical opinions’ from each
 27 doctor or other source, and ‘explain how it considered the supportability and consistency
 28 factors’ in reaching these findings.” *Id.* (citing 20 C.F.R. §§ 404.1520c(b), 404.1520(b)(2)).

1 Here, the ALJ laid out specific reasons supported by detailed citations to the medical
2 record to find Dr. Shah's May 2020 "Physical Capacities Evaluation" to be "less
3 persuasive" and only "partially persuasive." (R. at 32, 39–40.) The ALJ found Dr. Shah's
4 conclusions that the Applicant "could sit for 120 minutes, stand for 120 minutes, and walk
5 for 120 minutes in a four-to-six-hour workday" and "would be absent about three days per
6 month" due to pain were inconsistent with the medical treatment notes, citing a myriad of
7 treatment records in which Dr. Shah did not observe the Applicant was suffering severe or
8 chronic pain. (R. at 39–40, 2227–29.) In her brief, Plaintiff argues that the ALJ cherry-
9 picked records supporting her conclusion—a position bolstered by Dr. Shah's letter in
10 reaction to the ALJ's Decision in which Dr. Shah states she noted "motor strength limited
11 by pain" in "SEVERAL" of the Applicant's visits to her. But, as the ALJ pointed out, more
12 often than not, the treatment notes did not support the limitations proffered by Dr. Shah.
13 The ALJ carefully considered the treatment notes as a whole, and the Court will not
14 substitute its judgment for that of the ALJ in such an instance. *See Batson v. Comm'r of*
15 *Soc. Sec.*, 359 F.3d 1190, 1196 (9th Cir. 2004) ("When evidence reasonably supports either
16 confirming or reversing the ALJ's decision, we may not substitute our judgment for that of
17 the ALJ." (internal citation omitted)).

18 Dr. Shaarawy treated the Applicant for post-concussion syndrome and cervicalgia,
19 and he provided a number of functional evaluations of the Applicant that the ALJ
20 considered in detail. (R. at 38–39, 1597–1720.) The ALJ found Dr. Shaarawy's June 2019
21 evaluation "partially persuasive" that the Applicant had numerous physical limitations—
22 to avoid repetitive twisting, stooping, bending, and awkward positions—and that the
23 Applicant could work four to six hours a day. (R. at 38.) The ALJ noted that this opinion
24 came just four months after the motor vehicle accident causing the Applicant's concussion
25 and that later treatment notes showed the Applicant was less limited than Dr. Shaarawy
26 initially assessed. (R. at 38–39.)

27 Indeed, in August and September 2019, Dr. Shaarawy found the Applicant had a
28 mostly normal range of motion and grossly intact cranial nerves, while still limited

1 physically in certain movements, as previously assessed. (R. at 38.) The ALJ found these
2 assessments to be persuasive. (R. at 38.)

3 In July 2020, Dr. Shaarawy opined that the Applicant had no physical work-related
4 limitations—a conclusion the ALJ found “less persuasive” because the medical evidence
5 showed the Applicant was more limited than Dr. Shaarawy indicated. (R. at 39.) At the
6 same time, Dr. Shaarawy opined without further elaboration that the Applicant would be
7 absent for about two days a month. (R. at 39.) The ALJ found that conclusion inconsistent
8 with Dr. Shaarawy’s other opinions and unsupported by the treatment notes and other
9 objective medical evidence. (R. at 39.) Principally, Plaintiff takes issue with the ALJ’s
10 decision not to incorporate the two-day-per-month absenteeism into the Applicant’s RFC.
11 (Pl. Br. at 14.) But, in citing specific portions of the medical record, the ALJ identified
12 cogent reasons supported by substantial evidence to discount Dr. Shaarawy’s last
13 assessment, including the absenteeism assessment.

14 The ALJ credited other opinions in the extensive medical record of this case and
15 provided reasons supported by substantial evidence for doing so. For example, the ALJ
16 found the opinion of Dr. Mack Stephenson to be persuasive as to the Applicant’s mental
17 status and noted that, although the Applicant showed impairment in cognitive function in
18 July 2019 testing, the Applicant also performed poorly in performance validity testing,
19 calling the results into question. (R. at 31.)

20 As for Plaintiff’s argument that the ALJ formulated the Applicant’s RFC—and
21 therefore the hypotheticals to the VE—improperly, the Court finds, as noted *supra*, that the
22 ALJ provided specific reasons supported by substantial medical evidence to identify the
23 Applicant’s limitations and formulate the RFC. A claimant’s RFC is “the most [he] can
24 still do despite [his] limitations.” 20 C.F.R. § 404.1545(a)(1). When formulating the
25 claimant’s RFC, the ALJ will consider the “limiting effects of all [the claimant’s]
26 impairments, including those that are not severe.” *Id.* § 404.1545(e). Because the ALJ
27 properly considered all the Applicant’s limitations in determining his RFC, the
28 hypotheticals she posed to the VE were also “supported by substantial evidence in the

1 record and reflecting all the claimant's limitations.” *Hill v. Astrue*, 698 F.3d 1153, 1161
2 (9th Cir. 2012). The ALJ thus did not err.

3 **B. Symptom Testimony**

4 In his testimony before the ALJ (R. at 56–97), the Applicant stated among other
5 things that he could not lift, sit, stand, or walk on a sustained and reliable basis and that he
6 could not predict when he would get a headache. Plaintiff now argues that the ALJ failed
7 to provide clear and convincing reasons for discounting the Applicant’s subjective
8 testimony. (Pl. Br. at 15–18.)

9 While credibility is the province of the ALJ, an adverse credibility determination
10 requires the ALJ to provide “specific, clear and convincing reasons for rejecting the
11 claimant’s testimony regarding the severity of the claimant’s symptoms.” *Treichler v.*
12 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (citing *Smolen v. Chater*, 80 F.3d
13 1273, 1281 (9th Cir. 1996)). For example, “[i]n evaluating the credibility of pain
14 testimony after a claimant produces objective medical evidence of an underlying
15 impairment, an ALJ may not reject a claimant’s subjective complaints based solely on a
16 lack of medical evidence to fully corroborate the alleged severity of pain.” *Burch v.*
17 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). But the ALJ may properly consider that the
18 medical record lacks evidence to support certain symptom testimony. *Id.* at 681. The ALJ
19 may also properly consider inconsistencies in the claimant’s testimony, including
20 inconsistencies between the claimant’s testimony of daily activities and symptom
21 testimony. *Id.*

22 Among his reasons for discounting portions of the Applicant’s symptom testimony
23 while incorporating others into the formulation of the Applicant’s RFC, the ALJ observed
24 that the Applicant’s “statements concerning the intensity, persistence and limiting effects
25 of these symptoms are not entirely consistent with the medical evidence and other evidence
26 in the record.” (R. at 36.) Specifically, the ALJ cited medical reports addressing
27 degenerative changes in the Applicant’s spine that supported mild symptoms and mild
28 impacts on the Applicant’s ability to move. (R. at 37.) Although Plaintiff takes issue with

1 the ALJ's discussion of the inconsistency between the Applicant's reports of symptoms
2 and his activities of daily life (Pl. Br. at 17), many of the activities the ALJ identifies are
3 work-related tasks, such as walking, performing chores, and engaging in activities of
4 sustained attention. (R. at 37–38.) Moreover, the ALJ noted the improvement in the
5 Applicant's condition with treatment as time passed after the motor vehicle accident
6 causing his concussion, even if the ALJ found the Applicant's treating physician,
7 Dr. Shaarawy, may have gone too far in characterizing the Applicant's physical
8 improvement. (R. at 38–39.)

9 In sum, the Court finds the ALJ's reasons for discounting—but not ignoring—the
10 Applicant's symptom testimony were specific, clear, and sufficiently convincing for the
11 Court not to disturb the ALJ's conclusions. *See Batson*, 359 F.3d at 1196.

12 C. Lay Witness Testimony

13 Finally, Plaintiff challenges the ALJ's assessment of the lay witness testimony. “In
14 determining whether a claimant is disabled, an ALJ must consider lay witness testimony
15 concerning a claimant's ability to work.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
16 1050, 1053 (9th Cir. 2006). If an ALJ disregards the testimony of a lay witness, the ALJ
17 must provide reasons “that are germane to each witness.” *Nguyen v. Chater*, 100 F.3d 1462,
18 1467 (9th Cir. 1996). Further, the reasons “germane to each witness” must be specific.
19 *Stout*, 454 F.3d at 1054. Plaintiff contends that the ALJ improperly rejected the lay opinions
20 of the Applicant's friends and family members. (Pl. Br. at 18–20.)

21 The ALJ considered the lay opinions of the Applicant's friends and family members
22 together with the Applicant's own testimony, because they mirrored one another. (R. at
23 35.) Because the lay opinions were the same as the Applicant's testimony, the ALJ
24 discounted them for the same reasons. And because the Court found those reasons
25 sufficiently specific, clear, and convincing to discount the Applicant's testimony, the ALJ's
26 reasons for discounting the lay witness testimony were equally valid.

27 In the absence of finding material error on the part of the ALJ, the Court must affirm
28 the ALJ's decision.

